



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 2622 (1955)
August 7, 1992

SUBJECT: Standard Language For Conservation Easements to
Protect Wetlands and Floodplains on Farmers Home
Administration Inventory Property

TO: State Directors, District Directors and
County Supervisors

ATTN: State Environmental Coordinators and
Farmer Program Chiefs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance to the field offices on the proper conservation easement language to use when recording wetland and floodplain conservation easement deed restrictions. The intended outcome is to allow FmHA to protect wetlands and floodplains on farm inventory property while maintaining the property's marketability as an agricultural production unit.

COMPARISON WITH PREVIOUS AN:

This AN replaces FmHA An No. 1923 (1955), dated May 12, 1989, entitled "Protecting and Enhancing Wetlands and Floodplains on Farmers Home Administration Inventory Property," and FmHA AN No. 1959 (1955), dated July 18, 1989, entitled "Recording Easements on Inventory Farms Prior to Sale."

IMPLEMENTATION RESPONSIBILITIES:

Section 1955.137(b) of FmHA Instruction 1955-C requires that appropriate restrictions be placed on the use of FmHA inventory farm property containing wetlands or floodplains. These conservation easement deed restrictions should be recorded at the time of the sale by including them in the deed conveying the property itself.

EXPIRATION DATE: July 31, 1993

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1955-C



Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

Three types of wetland conservation easement deed restrictions and a floodplain conservation easement deed restriction have been developed. These types of conservation easements, based on degree of use restriction, are as follows:

- A. Full easement restrictions -- This type of easement will be used to fully restrict wetlands which were converted after December 23, 1985, or wetlands that are not cropped to an agricultural commodity or are cropped less than frequently or do not have a history of haying or grazing. This easement will also be used when prior converted croplands are involved or for frequently cropped wetlands in a situation other than that covered by Exhibit C discussed below.
- B. Haying and grazing allowed -- This easement type allows for continued harvesting of hay and grazing of the easement area in accordance with a management plan jointly developed, and agreed to, by the U.S. Fish and Wildlife Service and the Soil Conservation Service. It applies only to wetlands that have a history of haying and grazing (not natural or cropped wetlands).
- C. Cropping allowed -- This easement type allows continued cropping of frequently cropped wetlands only. This easement type is for use only where necessary to maintain a property's marketability as an agricultural production unit of comparable type and where reduction of the amount of prior converted cropland placed under easement (below the 10% limit) has failed to achieve property marketability as an agricultural production unit comparable to the property as acquired.
- D. Floodplain -- This easement type will be used for properties which contain floodplain areas. Floodplain areas are identified by the Federal Insurance Administration of the Federal Emergency Management Agency.

The conservation easement deed restrictions are attached to this AN and are referred to as Exhibits A, B, C and D. Exhibit A should be used when full easement restrictions are needed (Delete II.B.(3), II.D, III.F if the easement manager does not intend to fence the area). Exhibit B can be used when haying and grazing can be allowed on the property in accordance with a Soil Conservation Service Management Plan. If farming is allowed to maintain agricultural marketability (frequently cropped wetlands), Exhibit C will be used. Exhibit D will be used for floodplain areas only. In several instances, brackets have been placed around portions of the language with guidance provided as to when the bracketed language will be used.

Separate easement language has been developed for each easement type. If more than one easement type occurs on separate parcels of a given property, the appropriate language should be used to establish the appropriate easement restrictions on each of these separate parcels. All such restrictions should then be included in the deed conveying the property itself. This will provide the purchaser of the property with the maximum amount of use from the property.

For example, an inventory farm property contains 50 acres of floodplains of which 20 acres have been determined to be frequently cropped wetlands. The frequently cropped wetlands were determined to be needed for crop production in order to maintain the property's marketability. In this instance, a floodplain easement deed restriction (Exhibit D) restricting the 30 acres of floodplains and a cropping easement deed restriction (Exhibit C) restricting the 20 acres of frequently cropped wetlands will be recorded as part of the deed of conveyance at the time this property is sold.

If you have any questions please contact James P. Fortner, Farmer Programs Loan Servicing and Property Management Division, at (202) 720-1976.

ANY REVISIONS OR MODIFICATIONS TO THIS AND THAT YOU WISH TO PUBLISH AS A STATE DIRECTIVE MUST BE SUBMITTED AND APPROVED BY THE ASSISTANT ADMINISTRATOR, FARMER PROGRAMS BEFORE IT IS RELEASED FOR IMPLEMENTATION IN YOUR STATE. THE ONLY EXCEPTION TO THIS REQUIREMENT IS WHEN THE REVISION OR MODIFICATION IS NECESSARY FOR COMPLIANCE WITH STATE LAW.



LA VERNE AUSMAN
Administrator

Attachments - Exhibits A, B, C, D

Exhibit A: FULL RESTRICTIONS

[Use this form to establish easements on wetlands with full restrictive conditions (including adjacent nonwetland buffers).]

CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA.

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat. In certain cases, a specific route on and across the easement area for landowner access to other portions of the property for farming or other uses may be designated if such access is not reasonably available from other routes outside the easement area.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing].

The above right of way shall be sufficiently wide (not to exceed __ feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.]¹ In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

¹ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner, including: (1) cutting or mowing; (2) cultivation; [(3) grazing;] (4) harvesting wood products; (5) burning; (6) placing of refuse, wastes, sewage, or other debris; (7) draining, dredging, channeling, filling, discing, pumping, diking, impounding and related activities; or (8) diverting or affecting the natural flow of surface or underground waters into, within, or out of the easement area.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement area. The responsibility for such plant control may be assumed in writing by the easement manager where the control or manipulation of such plants is deemed by the easement manager to affect easement management programs or policies.

[D. Cattle or other stock shall not be permitted on the easement area, except that the easement manager shall permit access to and use of waters within the area necessary for stock watering under such terms and conditions as the easement manager deems necessary to protect and further the purposes of this easement, provided:

(1) the easement manager bears the costs of building and maintaining fencing or other facilities necessary to preclude stock from entering the easement area;

(2) the easement manager shall consult with the landowner to determine the need for and the scope of fencing; and

(3) access for stock watering need not be permitted where other waters are reasonably available from other sources outside the easement area.]²

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area

² Use only when paragraph III. F is used.

in order to conduct wetlands management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

B. The right to install, operate, and maintain structures for the purpose of re-establishing, protecting, and enhancing wetlands functional values including the taking of construction materials to and from said sites.

C. The right to establish or re-establish vegetation through seedings, plantings, or natural succession.

D. The right to manipulate vegetation, topography and hydrology on the easement area through diking, pumping, water management, excavating, island construction, burning, cutting, pesticide application, fertilizing, and other appropriate practices. The easement manager shall consult with the landowner prior to any such manipulatory action occurring in order to determine the most appropriate method to avoid possible damage to the property(s) adjoining the easement area.

E. The right to conduct predator management activities.

F. [The right to construct and maintain fences in order to prevent or regulate grazing or other types of encroachment on the easement area.]³

G. [Notwithstanding permissive provisions of State or Federal law, the right to prohibit or regulate hunting or fishing or other taking of migratory birds, fish and wildlife. This right to prohibit any of these activities shall be effected by (1) the easement manager posting the area, or (2) otherwise giving notice of the prohibitions to the landowner.]⁴

H. [The right to exclude landowner and/or public entry, if such entry is deemed to pose a threat to fish and wildlife or their habitat.]⁵

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a State fish and wildlife agency is the easement manager.]

- 3 Use only if the easement manager intends to fence the easement area or a portion of the easement area.
- 4 Use only when this is a necessary precondition for the easement manager to accept the easement.
- 5 Use only when FWS recommends, with recommendation based upon severe existing or potential threat to fish and wildlife.

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all the terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may, from time to time, be promulgated under its general governmental authorities.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All right, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "wetland" is defined and determined by the Soil Conservation Service of the U.S. Department of Agriculture in accordance with Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.). Any ambiguities in this easement shall be construed in a manner which best effectuates wetland protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, wetland management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of wetland functional values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land. [Unless the easement manager prohibits public entry, the landowner may permit it at the landowner's discretion.]⁶

F. [Subject to paragraph III-G in this easement,]⁷ The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors or assigns. The easement manager shall have all discretionary powers of the United States under this easement. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

[VI. STATE AND/OR LOCAL REQUIREMENTS.]

[Insert any State and/or local wetland protection requirements that are more restrictive than those contained in the preceding paragraphs.]

6 Use this sentence whenever paragraph III. H is used.

7 Use this introductory phrase whenever paragraph III. G is used.

Exhibit B: HAYING AND GRAZING

[Use only for easement on wetland that has a history of haying and grazing when such practices are in accordance with forage management standards that provide for the protection and restoration of wetland functions and values.]

CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA.

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat. In certain cases, a specific route on and across the easement area for landowner access to other portions of the property for farming or other uses may be designated if such access is not reasonably available from other routes outside the easement area.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing]

The above right of way shall be sufficiently wide (not to exceed __ feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.]¹ In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

¹ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner, including: (1) cultivation; (2) harvesting wood products; (3) burning; (4) placing of refuse, wastes, sewage, or other debris; (5) draining, dredging, channeling, filling, discing, pumping, diking, impounding and related activities; or (6) diverting or affecting the natural flow of surface or underground waters into, within, or out of the easement area. The landowner shall have the right to graze domestic livestock and harvest hay by cutting or mowing, in accordance with a management plan jointly developed and agreed to by the U.S. Fish and Wildlife Service and the Soil Conservation Service (prior to the disposal of the property from inventory), provided:

(1) hay cutting or mowing is provided for in the management plan and is limited to once annually between July 15 and September 1 with the actual scheduled date set to ensure that there is adequate regrowth of vegetation to provide winter cover and early spring nesting cover;

(2) grazing is provided for in the management plan and does not exceed 25 percent Harvest Efficiency in any given year and ensures adequate regrowth of vegetation to provide winter cover and early spring nesting cover;

(3) the timing and intensity of hay cutting or mowing and of grazing shall provide for the protection and restoration of wetlands functions and values as the overriding easement purpose and the purpose of the management plan including the prohibition of both where woody vegetation is to be maintained or established; and,

(4) any subsequent changes to the timing and intensity of hay cutting or mowing and of grazing provided for in the management plan at the (time of property disposal from inventory) shall require the joint approval of the U.S. Fish and Wildlife Service of the U.S. Department of the Interior, Soil Conservation Service of the U.S. Department of Agriculture, and the landowner.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement area. The responsibility for such plant control may be assumed in writing by, and at the option of the easement manager either where the control or manipulation of such plants is deemed by the easement manager to affect easement management programs or policies.

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct wetlands management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

B. The right to install, operate, and maintain structures for the purpose of re-establishing, protecting, and enhancing wetlands functional values including the taking of construction materials to and from said sites.

C. The right to establish or re-establish vegetation through seedings, plantings, or natural succession.

D. The right to manipulate vegetation, topography and hydrology on the easement areas through diking, pumping, water management, excavating, island construction, burning, cutting, pesticide application, fertilizing, and other appropriate practices.

E. The right to conduct predator management activities.

F. [Notwithstanding permissive provisions of State or Federal law, the right to prohibit or regulate hunting or fishing or other taking of migratory birds, fish and wildlife. This right to prohibit any of these activities shall be effected by (1) the easement manager posting the area, or (2) otherwise giving notice of the prohibitions to the landowner.]²

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a State fish and wildlife agency is the easement manager.]

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

² Use only when this is a necessary precondition for the easement manager to accept the easement.

B. For purposes of management and administration of this easement, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all the terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under its general governmental authorities.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All right, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "wetland" is defined and determined by the Soil Conservation Service in accordance with Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.). Any ambiguities in this easement shall be construed in a manner which best effectuates wetland protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, wetland management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of wetland functional values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land.

F. [Subject to paragraph III-F in this easement,]³ The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H.* The easement manager shall be the agent of the United States or its successors and assigns. The easement manager shall have all discretionary powers of the United States under this easement. In the performance of any rights of the United States under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

I. Any subsequent amendment to or change in the timing and intensity of [hay cutting or mowing] [and] [grazing] on the easement area after the date of this conveyance shall require the approval of both the easement manager and the landowner.

[VI. STATE AND/OR LOCAL REQUIREMENTS.]

[Insert any State and/or local wetland protection requirements that are more restrictive than those contained in the preceding paragraphs.]

³ Use this introductory phrase whenever paragraph III. F is used.

Exhibit C: CROPPING

[Use only on frequently cropped wetlands if necessary to maintain a property's marketability as an agricultural production unit of comparable type.]

CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES

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This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA.

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat. In certain cases, a specific route on and across the easement area for landowner access to other portions of the property for farming or other uses may be designated if such access is not reasonably available from other routes outside the easement area.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing]

The above right of way shall be sufficiently wide (not to exceed __ feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funding, the easement manager commensurate with their respective levels of use.]¹ In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

¹ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner, including: (1) harvesting wood products; (2) burning; (3) placing of refuse, wastes, sewage, or other debris; (4) draining, dredging, channeling, filling, pumping, diking, impounding or related activities; or (5) diverting or affecting the natural flow of surface or underground waters into, within, or out of the easement area. The landowner shall have the right to use the easement area for the production of agricultural crops to the extent that present wetland conditions are not damaged.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement area.

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct wetlands management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used a Federal agency (other than U.S. Fish and Wildlife Service) or a State fish and wildlife agency.]

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all the terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under its general governmental authorities.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All right, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "wetland" is defined and determined by the Soil Conservation Service of the U.S. Department of Agriculture in accordance with Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.). Any ambiguities in this easement shall be construed in a manner which best effectuates wetland protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, wetland management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of wetland functional values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land.

F. The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors and assigns. The easement manager shall have all discretionary powers of the United States under this easement. In the performance of any rights of the United States under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

[VI. STATE AND/OR LOCAL REQUIREMENTS.]

[Insert any State and/or local wetland protection requirements that are more restrictive than those contained in the preceding paragraphs.]

Exhibit D: FLOODPLAINS ONLY

[Use only on easements containing floodplains only (no wetlands)]

Conservation Easement Reservations in the United States

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended, and Executive Order 11988 providing for the protection of floodplains. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA AND ACCESS THERETO:

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing]

The above right of way shall be sufficiently wide (not to exceed __ feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.]¹ In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

¹ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings, or other structures shall be built within the easement area when the easement manager determines, in consultation with the landowner, that a practicable alternative location outside the easement area is available to the landowner. Also, no dwellings, barns, outbuildings, or other structures shall be built within the easement area unless the construction conforms, at minimum, to the requirements of the National Flood Insurance Program (NFIP). Repairs to existing structures within the easement area may be made subject to the NFIP. The construction of fences needed for the purpose of livestock retention will be permitted within the easement area provided they do not impede the flow of water.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner, including: (1) placing earthen or other material fill on the easement area, or (2) placing of refuse, wastes, sewage, or other debris. This restriction does not apply to application of agricultural chemicals in accordance with Environmental Protection Agency Use Restrictions, except that application of agricultural chemicals within 100 feet of a stream or river is prohibited. The landowner shall have the right to carry on farming practices such as grazing, hay cutting, plowing, working and cropping the easement area without further degradation of floodplain values.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement area.

D. Notwithstanding the provisions of paragraph II-B above, the landowner may establish and/or repair stream-bank riprap if such actions are necessary to protect the integrity of fields and/or buildings and provided such riprap is performed in consultation with the easement manager and under the direction of appropriate Federal, State, and local authorities.

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct floodplains management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any

right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a State fish and wildlife agency is the easement manager.]

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all the terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under its general governmental authorities.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All right, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of floodplain functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the floodplain areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "floodplain" is defined by reference to section 6(c) of Executive Order 11988. Any ambiguities in this easement shall be construed in a manner which best effectuates floodplain protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law, order or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, floodplain management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of floodplain values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land.

F. The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors and assigns. The easement manager shall have all discretionary powers of the United States under this easement. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

[VI. STATE AND/OR LOCAL REQUIREMENTS.]

[Insert any State and/or local floodplain protection requirements that are more restrictive than those contained in the preceding paragraphs.]